frontier present exciting possibilities that can benefit from the Innovation Technology Joint Venture.

H. The Commercial Agreements Will Not Affect the MSOs' Backhaul Pricing or Private Line Services

Rural Cellular Association ("RCA") asserts that the Agency and Reseller Agreements, somehow "raise . . . question[s] of whether the [MSOs] have an incentive to continue to provide . . . wireless carriers [other than Verizon Wireless] with competitive offerings in the backhaul and special access markets."[59] Sprint likewise questions whether the Agency and Reseller Agreements will stifle competition on backhaul and private line services between the MSOs and Verizon Telecom.[60] Free Press claims, without citing any provision of any agreement, that the Commercial Agreements require that "Verizon [must] choose Comcast if it is in need of third party backhaul services."[61]

These criticisms have no factual basis – either in the Commercial Agreements or elsewhere. The only provision relevant to backhaul establishes that **[BEGIN HIGHLY CONFIDENTIAL]**

[END HIGHLY CONFIDENTIAL] Nothing in the Commercial Agreements *requires* the MSOs to provide backhaul services to Verizon Wireless on any terms. The MSOs will continue to have every economic incentive to market their backhaul services to a range of prospective customers, including not only Verizon Wireless, but also Sprint, AT&T, T-Mobile, and others. Further, to the extent that Verizon Wireless does

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[59] RCA at 58; NTCH at 12.

[60] Comments of Sprint Nextel Corporation ("Sprint Nextel") at 10–12.

[61] Free Press at 47.

[62] *See, e.g.*, Comcast Agent Agreement § 3.9.

purchase backhaul services from the MSOs, such purchases will only strengthen a competitor to ILECs and CLECs in this space and thus enhance competition overall.

There is nothing in the Commercial Agreements relating to or affecting competition between Verizon Telecom and the MSOs in the provision of backhaul services or private line services to other wireless providers. As noted, Verizon Telecom is not even a party to the Commercial Agreements. RCA and Sprint never provide any explanation for how Commercial Agreements between the MSOs *and Verizon Wireless* could impair competition between the MSOs *and Verizon Telecom* in these services. Nothing in the Agreements prevents Verizon Telecom from successfully competing for backhaul business, and nothing requires the MSOs to grant Verizon Wireless preferential treatment over other customers for backhaul service. Speculative assertions are insufficient to raise a public interest objection to the Commercial Agreements.

I. The Commercial Agreements Do Not Dictate Verizon Wireless's Data Roaming Policy

Sprint suggests that the Commercial Agreements must be reviewed to determine whether they will affect data-roaming policy.[63] Yet it notes from the outset that the Commission has already adopted rules governing roaming obligations for wireless data,[64] and that litigation on those rules is ongoing.[65] Given these circumstances, Sprint's speculation on data roaming policy at some future point is not transaction specific and not an issue in this proceeding. There are

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[63] Sprint Nextel at 13–16; *id.* at 14 ("For instance, will data roaming agreements become even more difficult to negotiate in the future? Will the Verizon/Cable Company agreements foreclose the possibility that any other carrier could ever build a competing system using the spectrum that Verizon is acquiring?").

[64] Sprint Nextel at 13.

[65] *Cellco Partnership v. Fed. Commc'ns Comm'n*, Nos. 11-1135 & 11-1136 (D.C. Cir. May 13, 2011).

many factors are outside the scope of the proposed transactions that come into play, including the current litigation over the Commission's data roaming rules and the exceptions to data roaming obligations (the inquiries into technological compatibility and feasibility), and thus the issues should continue to be addressed through proceedings of general applicability and subsequent review by the courts.[66]

J. The Commercial Agreements Do Not Prohibit Verizon Wireless From Selling Over-the-Top Video Service or Verizon Telecom From Promoting Such Services

Free Press claims that the Agency Agreements prohibit "Verizon Wireless from selling *any* over-the-top video service (except FiOS)" and prohibit "Verizon . . . from even *promoting* over-the-top video applications like Netflix."[67] Both claims are false.

The provisions of the Agency Agreements apply only to the parties to those agreements – Verizon Wireless and the MSOs. Nothing restricts Verizon Telecom's sales or promotion activities. Indeed, on February 6, 2012 – nearly two months after Verizon Wireless entered into the Agency Agreements – Verizon Telecom and Coinstar, Inc. announced the formation of a joint venture that would offer consumers, among other things, a "new content-rich video-on-demand streaming and download service from Verizon."[68] Accordingly, Free Press's claim that the Agency Agreements prohibit "Verizon" from selling or promoting over-the-top video applications is demonstrably untrue.

Free Press's claims regarding limits on Verizon Wireless's sale and promotion of over-the-top video services are likewise untrue. Free Press claims that the Agency Agreements

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[66] Sprint Nextel at 15 (citing 47 C.F.R. § 20.12(e)(1)).

[67] Free Press at 45 (emphases in original).

[68] Press Release, Verizon Commc'ns, Verizon and Coinstar's Redbox Form Joint Venture to Create New Consumer Choice for Video Entertainment (Feb. 6, 2012), http://newscenter.verizon.com/press-releases/verizon/2012/verizon-and-coinstars-redbox.html.

prohibit "Verizon Wireless from selling *any* over-the-top video service (except FiOS)."

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[END HIGHLY CONFIDENTIAL] Nothing in the agreements *in any way* limits the content that Verizon Wireless customers may access using their wireless devices. Free Press's hyperbolic claims lack any factual basis.

CONCLUSION

In conclusion, the Commercial Agreements pose no plausible threat to competition or to the public interest. Indeed, many commenters who level such criticisms are competitors of the Applicants who, while professing concerns about diminished competition, are truly concerned by the enhanced competition and consumer choice that the Commercial Agreements will bring.

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[69] **[BEGIN HIGHLY CONFIDENTIAL]**

[END HIGHLY CONFIDENTIAL]

CERTIFICATE OF SERVICE

I, Neil Alan Chilson of Wilkinson Barker Knauer, LLP, hereby certify that the foregoing Joint Opposition to Petitions to Deny and Comments (Redacted – For Public Inspection) was served this second day of March, 2012, by depositing a true copy thereof with the United States Postal Service, first class postage pre-paid, addressed to the parties listed below. Courtesy email copies were also sent where email addresses were available, as also indicated below.

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